

1507 - 21st Street, Suite 330  
Sacramento, California 95811  
Telephone: (916) 445-1888  
Contact Person: Kathy Tomono  
[www.nmvb.ca.gov](http://www.nmvb.ca.gov)

STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD  
**MINUTES**

The New Motor Vehicle Board ("Board") held a General meeting on December 10, 2009, in Hearing Room #1, at the Board's offices.

2. **ROLL CALL**

Robert T. (Tom) Flesh, President of the Board, called the meeting of the Board to order at 9:25 a.m.

Present:	Ramon Alvarez C. Ryan L. Brooks Robert T. (Tom) Flesh Alan J. Skobin Glenn E. Stevens	William G. Brennan, Executive Director Howard Weinberg, General Counsel Robin Parker, Senior Staff Counsel Polly Riggerbach, Staff Counsel
----------	---	---

Absent: David C. Lizárraga  
Haig Papaian  
Victoria R. Pearson  
David W. Wilson

3. **PLEDGE OF ALLEGIANCE**

Mr. Stevens led the members and staff in the Pledge of Allegiance.

4. **APPROVAL OF THE MINUTES FROM THE SEPTEMBER 10, 2009, GENERAL MEETING**

Mr. Alvarez moved to adopt the September 10, 2009, General Meeting minutes. Mr. Stevens seconded the motion. The motion carried unanimously.

5. **ORAL PRESENTATION BEFORE THE PUBLIC MEMBERS OF THE BOARD**

The Dealer Members did not participate in Agenda items 5-7 because they involved a dispute between a franchisee and franchisor.

- a. WALTER TIMMONS ENTERPRISES, INC., dba TIMMONS VOLKSWAGEN  
v. VOLKSWAGEN GROUP OF AMERICA, INC.  
Protest No. PR-2146-09

Mr. Flesh addressed the request for intervention filed on December 3, 2009, on behalf of McKenna Motor Co., Inc. (the proposed relocating dealer) by Aaron Jacoby, Esq., for the limited purpose of appearance at the Board's meeting for consideration of the Proposed Decision. On December 7, 2009, the Board received Respondent's notice of non-opposition to McKenna's request. On December 7, 2009, Bill Brennan as the Executive Director issued an order pursuant to Section 551.13 of Title 13 of the California Code of Regulations denying the request for intervention. On December 8, 2009, the Board received Protestant's opposition.

Mr. Flesh read the following policy adopted by the Board at its September 10, 2009, General Meeting, concerning public comment during consideration of Proposed Decisions, Orders, or Rulings conducted pursuant to the Administrative Procedure Act:

"Comments by the parties or by their counsel that are made regarding any proposed decision must be limited to matters contained within the Administrative record of the proceedings. No other information or argument will be considered by the Board.

Members of the public may comment on such matters at the end of the meeting."

After a lengthy discussion, Mr. Flesh indicated that the Board had no other choice than to follow the exact policies laid down at the September meeting and that such comments from the public should be made at the end of the meeting. Furthermore, any member of the public who wishes to speak can so speak and is not limited to the record at that time.

Oral comments were presented before the Public Members of the Board. Michael J. Flanagan, Esq. of the Law Offices of Michael J. Flanagan represented Protestant. Allen Resnick, Esq. of Jeffer, Mangels, Butler & Marmaro LLP represented Respondent.

- b. CALABASAS EURO AUTO GROUP, LLC v. AUTOMOBILI LAMBORGHINI,  
S.p.A.  
Protest No. PR-2174-09

Protestant filed a "Notice of Challenge to Board Member/President Tom Flesh from Participating in Matters and/or Proceedings." Mr. Weinberg, as the Board's General Counsel, indicated as follows: (1) Protestant's motion to disqualify Mr. Flesh was late under the Board's regulations; (2) Mr. Flesh's participation is legally required under Government Code section 87101; and (3) Section 11512(c) provides that no agency member shall withdraw voluntarily or be subject to disqualification if his or her disqualification would prevent the existence of a quorum qualified to act in a particular case. Mr. Weinberg concluded that Mr. Flesh's participation is legally required for a quorum for this Board to go forward.

Mr. Flesh participated for purposes of a quorum and Mr. Stevens functioned as the presiding member.

Mr. Stevens took official notice of records that are before this Board pursuant to Government Code section 11515 and Evidence Code section 452 as follows:

- On December 9, 2008, a protest was filed by Platinum and that protest was based on a notice of termination served by Lamborghini on them at another date prior to December 9, 2008. The notice of termination was not sent to the dealer member after the ninth because the protest was filed on the ninth and at that hearing, it was established that it was sometime prior to that.
- Between December 9, 2008, and July 31, 2009, it is a period of 234 days, which is outside the 10-day limit.
- The notice of termination on Platinum and the notice of termination on Calabasas were in the exact same envelope when they were given to the dealer member because there is no evidence to contravene that fact that was introduced by Lamborghini.

Oral comments were presented before the Public Members of the Board. Carlos F. Negrete, Esq. of the Law Offices of Carlos F. Negrete represented Protestant. Allen S. Resnick, Esq. of Jeffer, Mangels, Butler & Marmaro, LLP and Randall L. Oyler, Esq. of Barack Ferrazzano represented Respondent.

## 6. **CLOSED EXECUTIVE SESSION DELIBERATIONS**

Pursuant to Government Code section 11126(c)(3), Vehicle Code section 3008(a), and Title 13, California Code of Regulations, sections 581 and 588, the Board convenes in closed Executive Session to deliberate the decisions reached upon the evidence introduced in proceedings that were conducted in accordance with Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

### a. **CONSIDERATION OF PROPOSED DECISION**

WALTER TIMMONS ENTERPRISES, INC., dba TIMMONS VOLKSWAGEN  
v. VOLKSWAGEN GROUP OF AMERICA, INC.  
Protest No. PR-2146-09

Consideration of the Administrative Law Judge's Proposed Decision, by the Public Members of the Board.

The Public Members of the Board deliberated in closed Executive Session. Mr. Stevens moved to adopt the Administrative Law Judge's Proposed Decision. Mr. Flesh seconded the motion. The motion carried by a 2:1 vote with Ryan Brooks opposed.

b. **CONSIDERATION OF PROPOSED ORDER**

CALABASAS EURO AUTO GROUP, LLC v. AUTOMOBILI LAMBORGHINI,  
S.p.A.

Protest No. PR-2174-09

Consideration of the Administrative Law Judge's Proposed Order Granting Respondent's Motion to Dismiss Protest, by the Public Members of the Board.

The Public Members of the Board deliberated in closed Executive Session. Mr. Stevens moved to adopt the Administrative Law Judge's "Proposed Order Granting Respondent's Motion to Dismiss". Mr. Brooks seconded the motion. The motion carried by a 2:0 vote with Mr. Flesh abstaining. Mr. Flesh did not participate in any discussion of the Proposed Order.

7. **OPEN SESSION**

The Public Members returned to Open Session. Ms. Parker announced the decisions in Agenda Items 6(a) and 6(b).

Mr. Brooks addressed the issue of public comment and indicated that the Board does not have to allow public comment on matters being adjudicated. Furthermore, he is a big advocate for public comment. The Ad Hoc Committee that reviewed this issue he explained was trying to create a compromise wherein public comment would be allowed in cases after the Board considered the proposed decision, ruling, or order. Mr. Brooks indicated that this matter will be revisited by the Committee.

19. **PUBLIC COMMENT (GOV. CODE § 11125.7)**

Subject to Mr. Jacoby waiving any objection to the Board not following its policy concerning public comment, this matter was moved up on the agenda to allow Aaron Jacoby to comment on the matters that had occurred so far. Mr. Jacoby urged the Board to reconsider the time when public comment should occur and to find a way to allow public comment on the record on case management matters.

8. **STATUS REPORT CONCERNING MANUFACTURER AND DISTRIBUTOR COMPLIANCE WITH VEHICLE CODE SECTIONS 3064/3074 AND 3065/3075 (THE FILING OF STATUTORILY REQUIRED SCHEDULES AND FORMULAS) - ADMINISTRATION COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Polly Riggensbach updating manufacturer and distributor compliance with the Board's request that statutorily mandated schedules or formulas be filed with the Board. Ms. Riggensbach reported since the memo was sent to the members, compliance is up to 89%. Furthermore, she indicated that of the 239 licensed manufacturers, 213 have compliant filings with the Board, 13 have filings that are not quite compliant, and another 13 have no filings.

9. **DISCUSSION CONCERNING THE NUMBER OF HITS TO THE BOARD'S WEBSITE - ADMINISTRATION COMMITTEE**

The members were provided with a memorandum from Bill Brennan, Dawn Kindel, and Kathy Tomono updating the development and use of the Board's website. Miss Kindel reported that at the September 10, 2009, General Meeting, the Board was provided with an annual report on the use of the Board's website. Several Board members asked for clarification of the report since the number of overall hits did not appear to reconcile with the top five requested pages. Miss Kindel was available to answer any questions.

The following chart reflects the top 10 page views:

	Pages	Page views
1	Home page	108,661
2	Appeal decisions	33,030
3	Protest final decisions	18,482
4	Protest final decisions index	10,527
5	RSS What's New feed	9,360
6	Protest samples	5,240
7	Mediation Request Form	4,896
8	Guide to the NMVB	4,867
9	Search NMVB Web	3,935
10	Meet the NMVB Members	3,915
	All other pages	198,651
	Total	401,564

Mr. Flesh welcomed Tom Novi, former Board Executive Director, who was present in the audience.

10. **BOARD FINANCIAL CONDITION REPORT FOR THE PREVIOUS FISCAL YEAR - FISCAL COMMITTEE**

The members were provided with a memorandum from Bill Brennan, Dawn Kindel, and Linda Lighter concerning the Board financial condition report for fiscal year 2008-2009. Mr. Brennan reported that the Board expended 85% of its appropriated budget for the fiscal year. The Board expended 90% of its budgeted expenditures on payroll. With regards to general operating expenses, the Board spent 52% of its budgeted amount. Mr. Brennan indicated that the Board has not filled two clerical positions in an effort to reduce expenditures. The fees the Board collects for dealers is down \$60,000, and down \$90,000 for manufacturers/distributors.

11. **STATUS REPORT CONCERNING THE BOARD'S FINANCIAL CONDITION FOR THE 1<sup>ST</sup> QUARTER OF FISCAL YEAR 2009-2010 AND STATUS ON THE BOARD'S COLLECTION OF ITS ANNUAL FEES - FISCAL COMMITTEE**

The members were provided with a memorandum from Bill Brennan, Dawn Kindel, and Linda Lighter concerning the Board financial condition for the 1<sup>st</sup> quarter of 2009-2010. Mr. Brennan reported that the Board expended 28% of its appropriated budget through the first quarter of fiscal year 2009-10. Additionally, Mr. Brennan reported on the status of the Board's collection of its annual fees. Since May 2009, when Board staff began invoicing manufacturers and distributors for vehicles sold in calendar year 2008, it has collected \$536,000. The Board has not collected from Chrysler Group LLC and Fleetwood Enterprises, Inc. Both of these companies filed for bankruptcy and it is unknown whether fees based on 2008 sales will be paid through bankruptcy proceedings. The Board staff has submitted proofs of claim to the appropriate courts. Chrysler's fee is \$38,916.31 and Fleetwood's is \$908.54. Mr. Brennan expects the Board's collection of annual fees to be down \$450,000 from the previous fiscal year. Additionally, Mr. Brennan indicated that the Board has over \$2 million in its reserve account, so it is in good fiscal shape for a couple of years.

12. **DISCUSSION AND CONSIDERATION OF 2010 INDUSTRY ROUNDTABLE - GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Robin Parker concerning the 7<sup>th</sup> Industry/Attorney Roundtable in Sacramento on March 24, 2010. The members were also provided an agenda with proposed topics and speakers. Ms. Parker reported that the staff proposed hosting the Roundtable on March 24, the day after the California New Car Dealers Association Dealer Day event. The Roundtable would be in West Sacramento at the Ziggurat Building, which is a State building, at a cost of \$500.00 which includes all of the audio visual needs. The staff has proposed draft topics and proposed speakers. Mr. Flesh moved to approve the date, hosting the event and the general format of the event. However, the content of the agenda/topics is subject to Committee approval by January 10, 2010. Mr. Brooks seconded the motion. The motion carried unanimously.

13. **DISCUSSION CONCERNING LEGISLATION - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Howard Weinberg updating them on legislation. Mr. Weinberg reported that Senate Bill 95, the Car Buyers Protection Act of 2009, was chaptered on October 11, 2009, and there were no changes to the federal legislation.

- a. Legislation of Special Interest – none.
- b. Legislation of General Interest.
  - (1) Senate Bill 95 (Senator Corbett) – California Car Buyers' Protection Act of 2009.

c. Pending Federal Legislation of General Interest.

- (1) United States House of Representatives Bill 100 (U.S. Representative Dreier) - Commonsense Auto Recovery Act of 2009.
- (2) United States House of Representatives Bill 120 (U.S. Representative Frelinghuysen).
- (3) United States House of Representatives Bill 159 (U.S. Representative Pascrell).
- (4) United States House of Representatives Bill 385 (U.S. Representative Rogers) - Consumer Auto Relief Act of 2009 or the CAR Act of 2009.
- (5) United States House of Representatives Bill 1550 (U.S. Representative Sutton) - Consumer Assistance to Recycle and Save Act of 2009.
- (6) United States House of Representatives Bill 2224 (U.S. Representative Terry).
- (7) United States House of Representatives Bill 2743 (U.S. Representative Maffei) - Automobile Dealer Economic Rights Restoration Act of 2009.
- (8) United States House of Representatives Bill 2750 (U.S. Representative LaTourette) - Automobile Dealer Economic Rights Restoration Act of 2009.
- (9) United States House of Representatives Bill 2796 (U.S. Representative LaTourette) - Automobile Dealer Economic Rights Restoration Act of 2009.
- (10) United States House of Representatives Bill 3311 (U.S. Representative Blumenauer).
- (11) United States House of Representatives Bill 3367 (U.S. Representative Levin) - Heavy Duty Hybrid Truck Incentives Improvement Act of 2009.
- (12) United States House of Representatives Bill 3435 (U.S. Representative Obey)
- (13) United States House of Representatives Bill 3450 (U.S. Representative Jackson-Lee) - Automobile Dealers Fair Competition Act of 2009.
- (14) United States Senate Bill 209 (U.S. Senator Boxer).
- (15) United States Senate Bill 247 (U.S. Senator Feinstein) - Accelerated Retirement of Inefficient Vehicles Act of 2009.
- (16) United States Senate Bill 271 (U.S. Senator Cantwell) - Fuel Reduction using Electrons to End Dependence on the Mid-East (FREEDOM) Act of 2009.
- (17) United States Senate Bill 333 (U.S. Senator Mikulski).
- (18) United States Senate Bill 1135 (U.S. Senator Stabenow) - Drive America Forward Act of 2009.
- (19) United States Senate Bill 1200 (U.S. Senator Feinstein) - Short Term Accelerated Retirement of Inefficient Vehicles Act of 2009.
- (20) United States Senate Bill 1304 (U.S. Senator Grassley) - Automobile Dealer Economic Rights Restoration Act of 2009.

14. **ANNUAL REPORT OF STAFF PARTICIPATION IN THE CALIFORNIA STATE EMPLOYEES CHARITABLE CAMPAIGN (CSECC)**

The members were provided with a memorandum from Bill Brennan and Heather Collins, Chairperson for this year's California State Employees Charitable Campaign. Ms. Collins reported that the Board raised a total of \$2,169 for the campaign this year and achieved 100% participation from the staff, several Administrative Law Judges, and a Board Member. Mr. Brennan congratulated Heather on a job well done.

15. **SELECTION OF BOARD MEETING DATES FOR 2010**

The members were provided with a memorandum from Bill Brennan concerning upcoming Board meeting dates. The members went off the record for this discussion. Ms. Parker announced that the following meetings were scheduled for 2010:

- February 4, 2010, General Meeting, Los Angeles;
- March 23, 2010, General Meeting, Sacramento;
- March 24, 2010, 7<sup>th</sup> Industry/Attorney Roundtable, West Sacramento
- May 5, 2010, General Meeting, Riverside; and
- June 3, 2010, General Meeting, San Francisco.

16. **EXECUTIVE DIRECTOR'S REPORT**

- A. Administrative Matters.
- B. Case Management.
  - (1) Status of Protests.
  - (2) Status of Petitions.
  - (3) Status of Appeals.
  - (4) Matters Resolved.
- C. Judicial Review.
- D. Notices Filed Pursuant to Vehicle Code sections 3060/3070 and 3062/3072.
- E. Other.

Mr. Brennan provided the members with a report on Administrative Matters that identified all pending projects, the Board staff and committee assigned, estimated completion dates, and status. He indicated that the Attorney Roundtable and Administrative Law Judge Roundtable were both canceled. Furthermore, he reported on the National Association of Motor Vehicle Boards and Commissions meeting in October in South Carolina. Mr. Brennan indicated that the meeting was well-attended considering the economy and there were a number of informative presentations.

Ms. Rigenbach reported that since the members received the written Executive Director's Report, one new protest was filed, two protests were settled, and there were 39 protests pending. Additionally, a merits hearing was scheduled to commence in RV Ready on December 21, 2009.



Ms. Parker reported that there had been 107 notices of termination filed year-to-date; of those 41 were 15-day notices of termination. That number (107) was up considerably over prior years. There were 52 notices in 2008 and 34 notices in 2007. Additionally, Ms. Parker reported that there had been 52 protests filed this year compared to 42 in 2008. Thirty-one of the protests were terminations, compared to 21 in 2008, 18 in 2007, and 14 in 2006. Also, there had been nine (9) RV protests filed this year which was an increase from previous years.

Mr. Weinberg reported on judicial matters and indicated that the administrative record in *Powerhouse Motorsports Group, Inc.* was requested. Furthermore, there was a published opinion in *Nader Automotive Group* that pertained to discovery sanctions.

19. **PUBLIC COMMENT (GOV. CODE § 11125.7)**

Prior to going into closed Executive Session, Mr. Flesh asked if there were any public comments. No additional public comments were presented.

Messrs. Flesh, Alvarez, Brooks, and Stevens congratulated and thanked Alan Skobin (his term expires on January 15, 2010) for his years of service on the Board. Mr. Brennan also thanked Mr. Skobin for his service to the Board. A Resolution was presented to Mr. Skobin on behalf of the members.

17. **CLOSED EXECUTIVE SESSION**

Pursuant to Government Code section 11126(a)(1), all members of the Board shall convene in a closed Executive Session.

**CONSIDERATION OF ANNUAL PERFORMANCE REVIEW FOR EXECUTIVE DIRECTOR - EXECUTIVE COMMITTEE**

After a brief recess, this matter was postponed until the next meeting.

18. **OPEN SESSION**

The members never went into closed Executive Session.

19. **PUBLIC COMMENT (GOV. CODE § 11125.7)**

No additional public comment was presented.

20. **ADJOURNMENT**

With no further business to discuss, the meeting was adjourned at approximately 1:03 p.m.

Submitted by

---

WILLIAM G. BRENNAN  
Executive Director

APPROVED: \_\_\_\_\_

Robert T. (Tom) Flesh  
President  
New Motor Vehicle Board